

Before the
Common Ownership Communities
gomery County, Maryland
June 30, 1993

In the Matter of
Rita Shomette, Owner of
14417 Burslem Terrace,
Burtonsville, MD 20866
Complainant

Vs.

Case No. 140-0

Board of Directors
Greencastle Lakes Community
Association, Inc.
c/o The Management Group
One Bank Street, Suite 301
Gaithersburg, MD 20878-1504
Respondent

Decision and Order

The above-entitled case having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, for hearing, on May 26, 1993, pursuant to Sections 10B-5(i), 10B-9(a), 10B-10, 10B-11(e), 10B-12, and 10B-13 of the Montgomery County Code, 1984, as amended, and the Complainant having presented testimony, and the case file having been entered into the record, the panel makes the following findings of fact and conclusions of law and grants the Respondent's motion to dismiss the Complaint made at the conclusion of Complainant's case-in-chief.

1. By correspondence dated January 6, 1991, Rita W. Shomette (hereinafter the "Complainant") owner of 14417 Burslem Terrace, Burtonsville, Maryland, a single-family dwelling, attempted to file a formal dispute with the Office of Common Ownership Communities regarding the increase in assessment for the single-family units included in the 1991 budget of the Greencastle Lakes Community Association. The complaint included a petition signed by 57 single-family homeowners protesting the increased assessment in the 1991 budget. At that time the Complainant was advised that the Office was not yet accepting disputes and that she would be advised when the dispute resolution process was in operation. As of July 1, 1991, the Office of Common Ownership Communities was staffed and prepared to accept disputes for resolution.

2. By correspondence dated September 9, 1991, the Complainant requested that the Respondent Board discontinue the assessment and refund the increased charges to the single-family homeowners by adjusting the 1992 assessment on these units.

3. Minutes from the Respondent Board's October 28, 1991 meeting indicate that a motion made in response to the request of the Complainant to reconsider the assessment rate of the single-family units did not pass.

4. By correspondence dated November 12, 1991, from the management company for the Respondent Board, the single-family unit owners were advised that the Board's position on the assessment rate for the single-family units had not changed.

5. On November 20, 1991, Rita W. Shomette, the Complainant, filed a Complaint with the Office of Common Ownership Communities. The Complainant alleged that in October, 1990, the Greencastle Lakes Community Association, Inc. Board of Directors (hereinafter the "Respondent") approved the 1991 annual budget which included a larger percentage increase for the single-family properties than for the townhouses and back-to-back properties in the community. The Complaint alleged that this proportionate increase was in violation of Article II, Sections 3 and 4 of the Greencastle Lakes Community Association's Declaration. The Complainant further alleged that the increased proportion of the assessment is for maintenance and reserve funding for roads, parking spaces, curbs, streetlights, and sidewalks which serve the townhouses and back-to-back units only. Complainant requested an order requiring the Respondent Board to return to the proportionate assessment rates in effect before the 1991 budget and to refund the amounts collected from single-family unit owners in excess of the appropriate proportion of the budget.

6. The Respondent Board contends that the increased assessments are for reserve funding for community facilities relating to all units.

7. Inasmuch as this matter was not resolved through mediation, the dispute was presented to the Commission on Common Ownership Communities for action pursuant to Section 10B-11(e). On March 10, 1993 the commission voted to hold a public hearing which commenced and concluded on May 26, 1993.

FINDINGS OF FACT

1. Greencastle Lakes Community Association is a community consisting of 819 houses: 67 single-family detached houses, 652 townhouses, and 100 back-to-back houses.

2. There is no dispute that on October 30, 1990, the Respondent Board adopted the 1991 annual budget which included the increased assessment for each category of homeowner in the community. "Note 1" to that budget, entered under the heading "Assessments", states:

For the first time single family homeowners are budgeted to contribute to all community reserve funds. This accounts for the larger percentage increase for this group. In the past, single families did not contribute to the reserves for asphalt roads or sidewalks and curbs.

3. At the hearing, Complainant asked that Mr. Stanley Okumura, another single-family unit owner in the Greencastle Lakes Community and a former member of the Respondent Board of Directors, be allowed to present her case.

4. Mr. Okumura introduced a map of the community, minutes of several meetings of the Board of Directors indicating that parking spaces in the townhouse and back-to-back house areas were being reserved for the homeowners in those areas and that the single-family home owners had continued to request a reduction in their assessment rates which the Board had denied. Mr. Okumura argued that assessing the single-family units for maintenance and reserves for asphalt roads, sidewalks and curbs is in violation of Article II, Sections 3 and 4 of the Declaration of the Greencastle Lakes Community Association.

5. At the close of Ms. Shomette's case, presented by Mr. Okumura, the Respondent Board of Directors moved the case be dismissed.

CONCLUSIONS OF LAW

1. The Panel reviewed the facts in evidence in the light most favorable to Ms. Shomette, the Complainant, and granted the motion to dismiss for the following reasons.

2. Article II of the Declaration of the Greencastle Lakes Community Association makes certain provisions related to the possibility of the addition of property to that initially set aside for this development. No evidence was entered into the record that showed that these provisions were properly applicable to the complained of assessment rates. In the absence of evidence that the assessment rates related to "neighborhoods" established in an annexation or accretion to the original development, the applicable language regarding assessments is to be found in Article V, not Article II of the Declaration.

3. Article V at Section 1 provides for Annual Maintenance Assessments. Each fee owner in acceptance of a deed for property in the community is deemed to have covenanted to pay the appropriate proportionate share of the amount required by the Board of Directors to meet the annual expenses of the Association. This amount includes, in relevant part, the costs of maintaining, replacing, and repairing the common areas, as well as the cost of funding all reserves established by the Association, including when appropriate, a general operating reserve and a reserve for replacements.

4. Article V at Section 3 provides that the Association may establish and maintain a reserve fund for replacements of the common areas and community facilities by the allocation to such fund of an amount to be designated from time to time by the Board of Directors.

5. There is no provision in Article V which limits assessing reserves for community facilities to the differing types of units or requiring any proportionate assessment by type of unit.

6. Complainant failed to show that the sections of the Declaration which she sought to have applied to the action of the Board of Directors were in fact applicable to this action. Complainant did not show that the language relating to assessments and reserves in Article V was not the governing language for the action taken by the Board of Directors of which she had complained.

7. The Panel finds that the provisions of Article V govern the action taken by the Greencastle Lakes Community Association Board of Directors addressed in the Complaint, and that the action of the Board of Directors was in accordance with those provisions.


8. At the hearing, Mr. Okumura also alleged that the Board of Directors had taken action to enforce or implement its decision after the dispute had been filed with the Commission, in contravention of Section 10B-9(e) of the Montgomery County Code, 1984, as amended, by continuing to collect the assessment while the dispute was pending before the Commission. No evidence was introduced that the Board took any collection action against any homeowner delinquent in the payment of the disputed assessment. Since the Board determined and allocated the assessments and accepted payment but took no other action to enforce this decision, their actions were not in contravention of the prohibition in Section 10B-9(e).

9. Considering all of the facts presented by the Complainant as being true, and all of the evidence in the light most favorable to the Complainant, we find that the Board of Directors acted within its authority, in good faith, under the Association's Declaration.

ORDER

BASED ON THE AFOREGOING, it is hereby ordered that the Motion to Dismiss made by Respondent, Greencastle Lakes Community Association, is hereby granted. This decision is concurred in by Panel members Blumberg, Gordon and Stevens.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland, within 30 days from the date of this Order, pursuant to Chapter 1100, Subtitle B, Maryland Rules of Procedure.



Dinah Stevens, Panel Chairperson
Commission on Common Ownership
Communities

6722M